

ANNEXATION/CORPORATE BOUNDARY PROCEDURES

The following is a brief summary of three ways by which land may be annexed into the corporate limits by agreement of a town and the county in which the town is located. It does not include a description of procedures for landowner-initiated or town-initiated annexation.

1. Agreement to Relocate or Change Boundary Line

Va. Code § 15.2-3106 *et seq.* permits a town and county to agree simply to move the Town corporate line, subject to approval of the circuit court. This procedure allows no conditions, terms or agreements beyond the location of the new line. It creates no period within which additional annexation is barred.

Generally, the County has entered into such boundary line agreements for relatively minor or discrete changes. For example, this procedure has been used a few times to bring park land and school sites into the Town of Leesburg. More extensive boundary adjustments between Loudoun County and its towns are the incorporation of 236 acres on the south side of Round Hill into the town limits in 2004 and the recent approval to incorporate the Salamander Inn property into the Town of Middleburg.

In 1990, Leesburg and the County submitted a boundary line agreement to the Circuit Court of Loudoun County to bring certain riverfront property into the corporate limits for use as Town park land. The agreement among the landowner, the County and the Town included a condition that the property would be used for a park. The Court rejected the boundary line agreement as procedurally improper because it went beyond the establishment of a new boundary and included the conditions to be approved by the Court. The Court directed the parties to the annexation agreement provisions of the Code. The parties were able to deal with the problem by first placing a deed of open space easement on the park property and then submitting an unconditional boundary line to the Court.

A copy of the statute is included as Attachment 1.

2. Agreements Defining Annexation Rights

Va. Code § 15.2-3231 *et. seq.* allows a town and county to define the future annexation rights of the town. Upon entering such an agreement the town renounces its right to become a city. The agreement is to provide for the regular and orderly growth of the town in conjunction with the county and for an equitable sharing of resources and liabilities.

The agreement is heard, reviewed and acted upon by the Commission on Local Government. No court order is required to implement the agreement, although the Commission's decision may be appealed.

This is the procedure used by the County and the Town of Purcellville to adopt an annexation agreement. The Purcellville agreement includes an agreed land use plan and

phasing areas tied to the provision of utilities. The Town annexes land identified in the agreement by ordinance at the time of development.

A copy of the statute is included as Attachment 2.

3. Voluntary Settlement of Annexation, Transition or Immunity Issues

Va. Code § 15.2-3400 provides broad authorization for counties and towns to enter into agreements addressing boundaries and related matters. This statute was enacted on the initiative of Loudoun and Leesburg to provide a mechanism for the 1984 annexation agreement. The agreement may address any of the following matters:

1. Fiscal, land use, zoning, and subdivision and infrastructure arrangements.
2. Revenue and economic growth sharing. However, if an agreement obligates a county to make payments of tax revenues in future years, the arrangement must first be approved by the qualified voters of the county at a special referendum election to satisfy the debt limitation requirements in the Virginia Constitution.
3. Dedication of all or any portion of tax revenues to a revenue and economic growth sharing account.
4. Provisions for the acceptance on each other's behalf of proffers.
5. Boundary line adjustments.
6. Acquisition of real property and buildings.
7. Joint exercise or delegation of powers.
8. Modification or waiver of specific annexation, transition, or immunity rights as determined by the local governing body, so long as there is no conflict with the Virginia Constitution.
9. Subsequent court review by a three-judge court, instituted pursuant to provisions contained in the agreement.
10. Other provisions that the parties deem in their best interests.

A proposed settlement agreement must be submitted to the Commission for review. The Commission determines whether the proposed settlement is in the best interests of the Commonwealth and issues an advisory report. Then the localities may adopt the original agreement or a modified version after required public notification and hearing.

After the agreement is adopted, the localities must petition a three-judge court for an order establishing the rights of the parties as set forth in the agreement. Regarding the legal standard, the court must affirm unless it finds either (a) that the agreement is contrary to the best interests of the Commonwealth, including the State's interest in promoting the orderly growth and continued viability of local governments, or (b) that the agreement is not in the best interests of each of the parties. The court may affirm or deny the agreement in its entirety but may not amend or alter the terms or conditions without express approval from each party. A court order affirming an agreement is binding on future local governing bodies as well.

Finally, a special election for members of council is required if the annexation resulting from a voluntary agreement increases the Town's population by more than 5%.

A copy of the statute is included as Attachment 3.

Attachment 1

Code of Virginia, Title 15.2, Chapter 31, Article 2: Relocation or Change, by Agreement, of Boundary Line Between Localities; Adjustment by Court

§ 15.2-3106. Establishment by agreement.

Whenever any two or more localities wish to relocate or change the boundary line between them, the governing bodies of such localities may, by agreement, establish, relocate or change such boundary line between them.

(1977, c. 277, § 15.1-1031.1; 1983, c. 594; 1993, c. 392; 1997, c. 587.)

§ 15.2-3107. Publication of agreed boundary line.

Before adopting an agreement pursuant to § 15.2-3106, each governing body shall advertise its intention to approve such an agreement at least once a week for two successive weeks in a newspaper having general circulation in its locality, and such notice shall include a descriptive summary of the proposed agreement. The summary shall describe the new boundary, but need not include a metes and bounds description. The publication shall include a statement that a copy of the agreement is on file in the office of the clerk of the governing body which is considering the proposed agreement. A joint publication of the proposed agreement by the localities which otherwise meets the requirements of this section shall satisfy this requirement. If joint publication is used, the publication costs shall be apportioned between the participating localities in the manner agreed upon by them. After providing the notice required by this section, each locality shall hold at least one public hearing on the agreement prior to its adoption.

(1977, c. 277, § 15.1-1031.2; 1983, c. 594; 1993, c. 392; 1997, c. 587.)

§ 15.2-3108. Petition and hearing; recordation of order; costs.

Within a reasonable time after a voluntary boundary agreement is adopted by the affected localities, each affected locality shall petition the circuit court for one of the affected localities to approve the boundary agreement. The petition shall set forth the facts pertaining to the desire to relocate or change the boundary line between the localities, and the petition shall include or have attached to it a plat depicting the change in the boundaries of the localities as agreed or a metes and bounds description of the new boundary line as agreed upon by the two localities. If the court finds that the procedures required by § 15.2-3107 have been complied with and that the petition is otherwise in proper order, the court shall enter an appropriate order establishing the new boundary. The order shall include a plat depicting the change in the boundaries of the locality or a metes and bounds description of the new boundary line of the locality, and that order

shall be entered in the land records of the court and indexed in the names of the localities which were involved. Costs shall be awarded as the court may determine. Whenever such an order is entered, a certified copy of the order shall be sent to the Secretary of the Commonwealth by the clerk of the court.

(1977, c. 277, § 15.1-1031.3; 1983, c. 594; 1993, c. 392; 1997, c. 587.)

§ 15.2-3109. Court-ordered adjustment of boundary lines.

A. Whenever any two localities have agreed that a change should be made to their common boundary line so that public services in an area may be provided more effectively and more efficiently, but are unable to agree as to the proper location for the new boundary line, their governing bodies may petition jointly either of the circuit courts for their respective localities for an order establishing the new boundary line within the terms of the petition. The court shall refer the petition to the Commission on Local Government, and shall also certify the filing of the petition to the Supreme Court with a request that a three-judge court be convened pursuant to § 15.2-3000 to decide the matter. The Commission shall conduct a hearing to receive evidence concerning the location of the new boundary line. Any interested persons may present evidence. The Commission shall publish notice of its hearing at least once a week for two successive weeks in newspapers of general circulation in each locality. Based upon the evidence and the report of its staff, the Commission shall determine a new boundary line that best promotes the more effective and efficient provision of public services. The Commission shall transmit its findings to the court in writing, where they shall be received in evidence. The court shall hear evidence with respect to relocating the boundary line and shall enter an order establishing the new boundary line so as to promote, to the extent possible, the more effective and more efficient provision of public services. Such order shall set forth the terms for the transfer of territory and shall be recorded in the common-law order book and in the current deed book for both localities' courts and indexed in the name of the localities as the case may be. A certified copy of the order shall be sent to the Secretary of the Commonwealth by the clerk of the circuit court.

B. Notice of any application as provided in subsection A hereof shall be served upon the property owners, if any, of the area affected by the agreement, and if such property owners object to the change, they shall be permitted to intervene in the proceedings and show cause why the boundary line should not be changed.

(1979, c. 85, § 15.1-1031.4; 1997, c. 587.)

Attachment 2

Code of Virginia, Title 15.2, Chapter 32, Article 2: Agreement Defining Annexation Rights

§ 15.2-3231. Agreements between towns and counties authorized; effect; provisions.

Towns in counties, or parts of counties, not immune from annexation may voluntarily enter into agreements with such counties for the purpose of defining the town's annexation rights in the future. Upon the execution of such an agreement by both the town and the county, the town shall permanently renounce its right to become a city. Any such agreement shall provide for the regular and orderly growth of the town in conjunction with the county and for an equitable sharing of resources and liabilities. It shall also provide that the town may annex at regular intervals by the adoption of an ordinance.

(1979, c. 85, § 15.1-1058.1; 1997, c. 587.)

§ 15.2-3232. Hearing before Commission on Local Government required; notice.

A. Once the town and county governing bodies have decided upon the terms of an agreement pursuant to § 15.2-3231, the proposed agreement shall be presented to the Commission on Local Government. The Commission shall conduct a public hearing at some location in the town or the county and interested parties may appear and offer evidence or comments. The hearing shall be duly advertised in some newspaper having general circulation in the county and the town once a week for two successive weeks, stating the time and place of the hearing, and summarizing the terms of the proposed agreement. The second advertisement shall appear not less than six days nor more than 21 days prior to the hearing. The Commission shall then determine whether the proposed agreement provides for the orderly and regular growth of the town and county together, for an equitable sharing of the resources and liabilities of the town and the county, and whether the agreement is in the best interest of the community at large, and shall so advise the governing bodies in a written opinion.

B. In addition to the advertising required in subsection A, written notice of the Commission on Local Government's hearing shall be given by the town at least 10 days before the hearing to the owner, owners, or their agent of each parcel of land included in the area proposed for annexation under the terms of the agreement. One notice sent by first-class mail to the last known address of such owner, owners, or their agent as shown on the current county real estate tax assessment books or current county real estate tax assessment records shall be deemed adequate compliance with this requirement, provided that the clerk of the town shall make an affidavit that such mailings have been made and file such affidavit with the Commission. Nothing in this subsection shall be construed as to invalidate any subsequently adopted agreement because of the inadvertent failure by the town to give written notice to the owner, owners, their agent or the occupant of any parcel in the area proposed for annexation.

(1979, c. 85, § 15.1-1058.2; 1997, c. 587; 2003, c. 173.)

§ 15.2-3233. Adoption of agreement.

After the Commission has advised the governing bodies of the two jurisdictions of its determination, and regardless of whether its determination is favorable, such bodies may adopt the agreement. If the Commission's determination is unfavorable, however, the governing bodies shall first conduct an additional joint public hearing advertised as provided in § 15.2-3232. Adoption of the agreement by both governing bodies will operate permanently to divest the town of its right to become a city. (1979, c. 85, § 15.1-1058.3; 1997, c. 587.)

§ 15.2-3234. Inability to agree; petition to Commission on Local Government.

In the event the governing bodies of the town and county cannot reach a voluntary agreement as to future annexation rights, the town may, by ordinance duly adopted by a majority vote of its governing body, petition the Commission on Local Government for an order establishing the rights of the town to annex territory by ordinance under specified agreed terms. A copy of such petition and ordinance shall be served on the attorney for the Commonwealth, or county attorney, if there is one, and on the chairman of the board of supervisors of the county. The county shall file its response to such petition with the Commission within sixty days after receipt of service thereof.

After the time for filing of a response by the county has elapsed, the Commission shall establish a date, time and place for a hearing, to be conducted in the county or the town, at which the parties, and any resident or property owner of either the county or the town may appear and present evidence or comment on the rights petitioned for by the town. After receiving such evidence, and making such further investigation as it deems appropriate, and based upon the criteria set forth in § 15.2-3209, the Commission shall enter an order which grants such rights to the town, either upon the terms set forth in the petition or upon some modified basis. The order shall in no event grant to the town the right to annex county territory by ordinance more frequently than once every five years. (1979, c. 85, § 15.1-1058.4; 1997, c. 587.)

§ 15.2-3235. Appeal.

Any order of the Commission regarding future annexation rights of a town shall become final unless either the town or the county or five percent of the registered voters in either jurisdiction, within thirty days of the entry of the order, petition the circuit court to review such order. The circuit court with which the petition is filed shall notify the Supreme Court, which shall appoint a special court to hear the case as provided by Chapter 30 (§ 15.2-3000 et seq.) of this title. The special court shall review such decision and enter any order it deems appropriate. A final order of either the Commission or the court granting the town the right to future annexation through the periodic adoption of ordinances shall operate permanently to divest the town of its rights to become a city. (1979, c. 85, § 15.1-1058.5; 1997, c. 587.)

Attachment 3

Code of Virginia, Title 15.2, Chapter 34: Voluntary Settlement of Annexation, Transition or Immunity Issues

§ 15.2-3400. Voluntary settlements among local governments.

Recognizing that the localities of the Commonwealth may be able to settle the matters provided for in this subtitle through voluntary agreements and further recognizing that such a resolution can be beneficial to the orderly growth and continued viability of the localities of the Commonwealth the following provisions are made:

1. Any locality may enter voluntarily into agreement with any other locality or combination of localities whereby any rights provided for its benefit in this subtitle may be modified or waived in whole or in part, as determined by its governing body, provided that the modification or waiver does not conflict with the Constitution of Virginia.
2. The terms of the agreement may include fiscal arrangements, land use arrangements, zoning arrangements, subdivision arrangements and arrangements for infrastructure, revenue and economic growth sharing, provisions for the acceptance on each other's behalf of proffered conditions under § 15.2-2298 or 15.2-2303, dedication of all or any portion of tax revenues to a revenue and economic growth sharing account, boundary line adjustments, acquisition of real property and buildings and the joint exercise or delegation of powers as well as the modification or waiver of specific annexation, transition or immunity rights as determined by the local governing body including opposition to petitions filed pursuant to § 15.2-3203, and such other provisions as the parties deem in their best interest. The terms of the agreement may also provide for subsequent court review, instituted pursuant to provisions contained in the agreement, by a special court convened under Chapter 30 (§ 15.2-3000 et seq.) of this title.
3. If a voluntary agreement is reached pursuant to this chapter, the governing bodies shall present to the Commission the proposed settlement. The Commission shall conduct a hearing pursuant to subsection A of § 15.2-2907. The Commission shall report, in writing, its findings and recommendations as to whether the proposed settlement is in the best interest of the Commonwealth. Such report shall not be binding upon any court but shall be advisory in nature only.
4. Upon receipt of the Commission report, the localities, by ordinance passed by a recorded affirmative vote of a majority of the members of each governing body thereof, may adopt either the original or a modified agreement acceptable to all parties. Before adopting such ordinance each local governing body shall advertise its intention to approve such agreement, or modified agreement, at least once a week for two successive weeks in a newspaper having a general circulation in its jurisdiction and such advertisements shall contain a descriptive summary of the agreement or modified agreement. Each locality shall hold at least one public hearing on the agreement or modified agreement prior to the adoption of the ordinance. The publication shall include

a statement that a copy of the agreement, or modified agreement, is on file in the office of the clerk of the circuit court for each of the affected jurisdictions.

5. The governing bodies shall petition a circuit court having jurisdiction in one or more of the localities for an order affirming the proposed settlement. The circuit court with which the petition is filed shall notify the Supreme Court, which shall appoint a special court to hear the case as prescribed by Chapter 30 (§ 15.2-3000 et seq.) of this title. The special court shall be limited in its decision to either affirming or denying the voluntary agreement and shall have no authority, without the express approval of each local governing body, to amend or change the terms or conditions of the agreement, but shall have the authority to validate the agreement and give it full force and effect. The court shall affirm the agreement unless the court finds either that the agreement is contrary to the best interests of the Commonwealth or that it is not in the best interests of each of the parties thereto. In determining whether such agreement should be affirmed, the court shall consider, among other things, whether the interest of the Commonwealth in promoting orderly growth and the continued viability of localities has been met. If the agreement is validated and provides for annexation by a city or town, the agreement shall take effect on the first day of the month succeeding validation of the agreement unless the agreement stipulates that the annexation shall be effective on some other date.

6. The agreement shall not become binding on the localities until affirmed by the special court under this section. Once approved by the special court, the agreement shall also bind future local governing bodies of the localities.

7. The applicable provisions of this chapter shall be deemed to have been met with regard to any voluntary fiscal agreement or voluntary agreement in settlement of an annexation, transition or immunity petition or voluntary settlement agreement entered into pursuant to this chapter (i) which was entered into before July 1, 1990, (ii) which had been reviewed or was in the process of review by the Commission on Local Government on or before July 1, 1990, (iii) which had been or was the subject of review by a special court convened under Chapter 30 of this title on or before July 1, 1990, or (iv) which had been or was approved by a special court convened under Chapter 30 of this title on or before July 1, 1990.

8. The provisions of § 15.2-3226 shall apply when a voluntary agreement made under this section includes the annexation of territory by a city or town. No election for members of council shall be held as a result of such annexation unless the city or town increases its population by more than five percent due to the annexation.

(1983, c. 523, § 15.1-1167.1; 1985, c. 478; 1986, c. 333; 1988, c. 881; 1990, cc. 62, 326; 1994, c. 293; 1996, cc. 644, 650; 1997, c. 587; 2003, cc. 197, 444, 583; 2006, c. 212.)

§ 15.2-3401. Referendum on contracting of debt by counties in voluntary settlement agreements.

Before a county, under the terms of a voluntary agreement pursuant to this chapter, contracts a debt pursuant to Article VII, Section 10 (b) of the Constitution of Virginia, the board of supervisors shall, in conformity with Article VII, Section 10 (b) of the Constitution of Virginia, petition the circuit court for the county for an order calling for a special election in the county on the question of contracting such debt.

The question on the ballot shall be as follows, provided that the circuit court in its order calling for the election may substitute alternative language necessary to specify the type of agreement or the particular debt which the county proposes to contract under an agreement:

"Shall (name of county) be authorized to contract a debt by entering into a contract for the payment (describe the debt or payment) to (name of locality to whom payments are to be made) as a part of the proposed voluntary annexation and immunity settlement agreement between the county and (name of other locality)?

☐ Yes

☐ No"

The clerk of the county shall cause a notice of the referendum to be published in a newspaper having general circulation in the county once a week for three consecutive weeks, the first such notice of which must be published not more than sixty days prior to the election and shall post a copy of the notice at the door of the county courthouse.

The election shall be held and the results thereof ascertained and certified in accordance with Article 5 (§ 24.2-681 et seq.) of Chapter 6 of Title 24.2. If a majority of the voters of the county voting in such election approve the contracting of such debt, the county may proceed to adopt, by ordinance, the agreement.

(1985, c. 66, § 15.1-1167.2; 1997, c. 587.)
